UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

D-3 BERNARD N. KILPATRICK

Defendant.
______________________________/

CRIM. NO. 10-20403-NGE

HON. NANCY G. EDMUNDS

GOVERNMENT'S RESPONSE TO DEFENDANT BERNARD KILPATRICK'S SENTENCING MEMORANDUM

In his sentencing memorandum, Defendant Bernard Kilpatrick mischaracterizes the $100,000 extortion payment from Karl Kado as nothing more than a donation towards Kwame Kilpatrick's reelection campaign. But that is not what his counsel told the jury during closing argument, when focused on beating the looming extortion and racketeering charges. There, his counsel argued that Bernard Kilpatrick had actually provided consulting services to Karl Kado, using his connections to the Kilpatrick Administration to help secure or protect Kado's electrical, janitorial and food services contracts at city-owned Cobo Civic Center. (*Transcript of Closing Argument of John Shea, Attorney for Bernard Kilpatrick, 2/14/13, at 12-20*.) He told the jury that the $100,000 was a payment for those services:

> Karl Kado confirmed that Bernard Kilpatrick thought that $100,000 was a catch-up on monies that were owed, and confirmed that Bernard Kilpatrick, in fact, thought that the monies were owed, so there's nothing improper with that $100,000 payment.
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> The bottom line here with Karl Kado is there's no question that he [Kado] asked for Bernard Kilpatrick's services in advancing Karl Kado's interests. There's no question that Bernard Kilpatrick provided those services, and there's no question that Karl Kado paid for the services.

(*Id. at 18-20*.)

Now that Bernard Kilpatrick's strategy has (mostly) succeeded, he claims that these closing arguments should not be held against him because they were erroneous recollections of Kado's testimony from two months earlier. But Kado's testimony did, in fact, support Bernard Kilpatrick's closing argument on this point. Kado testified on cross-examination that when he paid Bernard Kilpatrick the $100,000, Bernard Kilpatrick and Kado were having a dispute about whether Kado owed Bernard Kilpatrick money, and Kado was staying away from Bernard Kilpatrick in an attempt to avoid paying that money. (*Tr. of Jury Trial, Testimony of Karl Kado, Vol. 43, 12/4/13, at 29-30*.) The cross-examination then continued:

> Q: Any you gave him this $100,000?
>
> A: Yes.
>
> Q: And he took it as a payment for what you owed him. You wanted it used for the election, but he took it for what you owed him, correct?
>
> A: Okay.

(*Id. at 30*.) That testimony was unambiguous: Bernard Kilpatrick did not take the $100,000—in cash—as some sort of campaign donation. Bernard Kilpatrick may not whipsaw the jury and this Court into first characterizing that payment as a legitimate payment to a consultant, and now denying its very existence and claiming it was only a pass-through contribution to his son's re-election campaign.

In addition, given that Bernard Kilpatrick and Kado still remembered that $100,000 cash payment years later—when talking at a recorded meeting at Tom's Oyster Bar in February 2008—it is inconceivable that Bernard Kilpatrick simply forgot to tell his tax preparers about it when reporting his income for 2005. (*Gov't Exh. COBO-16.*) As the Court is well-aware from the testimony at trial, Bernard Kilpatrick's return preparers based the preparation of his tax returns on the information Bernard Kilpatrick included in his Maestro accounts. None of those Maestro records documented cash payments from Kado, and they certainly did not reflect a $100,000 cash deposit in 2005. Bernard Kilpatrick did not include it in his company's income because it was an illegal payment. And he did not want to pay taxes on it.

Finally, the $100,000 was not only taxable income, but also an extortionate payment triggering the enhancement in U.S.S.G. § 2T1.1(b)(1). Karl Kado repeatedly testified at trial that Bernard Kilpatrick was extorting him, and Kado's testimony—even standing alone—would satisfy the preponderance of the evidence standard that applies to sentencing enhancements. (*Tr. of Jury Trial, Testimony of Karl Kado, Vol. 42, 12/3/13, at 38-40; Vol. 43, 12/4/13, at 23.*) But that testimony did not stand alone. Witness after witness gave examples of Bernard Kilpatrick's extortionate conduct, confirming that Bernard Kilpatrick knew exactly what he was doing to Kado. Rosendall, for instance, testified that he only paid Bernard Kilpatrick because he was the mayor's father and he wanted to ensure the success of his contracts with the city. (*Tr. of Jury Trial, Testimony of James Rosendall, Vol. 65, 1/17/13, at 44, 50-53, 93-94, 110-111; Vol. 66, 1/18/13, at 35; Vol. 67, 1/22/13, at 36-39.*) Cunningham testified similarly. (*Tr. of Jury Trial, Testimony of Marc Andre Cunningham, Vol. 55, 12/21/12, at 28-33, 148.*)

This collection of testimony showed that Bernard Kilpatrick was not a legitimate consultant. He was a criminal—leveraging his son's elected office to shake down city contractors like Karl Kado. His guideline range of 27-33 months accounts for that reality. His sentence should as well.

Respectfully submitted,
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Dated: October 16, 2013

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2013, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to the following:

John A. Shea
Attorney for Bernard Kilpatrick

s/JENNIFER L. BLACKWELL
Assistant United States Attorney

Dated: October 16, 2013